

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. C-1628/NUSF
on its own motion, seeking to)	
conduct an investigation into)	Progression Order #15
intrastate access charge reform)	
and intrastate universal)	
service fund.)	Entered: February 21, 2001

BY THE COMMISSION:

1. On January 13, 1999, the Commission entered its findings and conclusions in this docket for the purpose of reducing implicit subsidies that exist in Incumbent Local Exchange Carrier (hereinafter "ILEC") charges for various telecommunications services and to implement a Nebraska Universal Service Fund (hereinafter "NUSF"). The purpose of the NUSF is to ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices. Therefore, reductions in ILEC implicit subsidies are replaced, where necessary, with explicit support from the NUSF to ensure this goal. In order to comply with Federal Telecommunications Act of 1996 and applicable Nebraska Statutes, funding for the NUSF is derived from an explicit and competitively neutral surcharge.

2. On September 12, 2000, the Commission entered Progression Order No. 11 in this docket. The purpose of this order was to seek comment on issues that have arisen since the January 13, 1999 order and either need to be addressed or clarified. Specifically, the Commission sought comment on eleven issues through the adoption of a series of proposals. Each of these eleven issues were assigned to a section, A through K. Subsequently, on September 26, 2000, the Commission clarified its proposal regarding Section A and set forth a separate comment and hearing cycle for Sections A, E, I and K.

3. On November 8, 2000, the Commission held a public hearing on Sections, B, C, D, F, G, H, and J. On January 31, 2001, the Commission held a public hearing on Sections A, E, I and K.

O P I N I O N S A N D F I N D I N G S

4. This order adopts opinion and findings regarding Sections B, C, D, E, F, and J.

B. TIC Phase-out

5. In the January 13, 1999, order, the Commission required that rural ILECs adopt the July 1, 1998 interstate Traffic Sensitive rate levels. The Commission also required that the TIC be phased to other intrastate Traffic Sensitive rate elements over the four year transition period which may result in certain intrastate Traffic Sensitive rate elements exceeding the July 1, 1998, interstate rate levels. To clarify this issue, the Commission finds that intrastate Traffic Sensitive rate elements can exceed July 1, 1998, interstate rate levels after the TIC phase-out. This exception only applies to

the rate elements to which the TIC is phased and the TIC phase-out must be done in a revenue neutral manner.

C. Mirroring Interstate Rates

6. As discussed above, the Commission required that rural ILECs adopt the July 1, 1998, interstate rate levels for Traffic Sensitive rate elements except for the TIC. The Commission finds that rural ILECs should not be required to automatically update their intrastate Traffic Sensitive rates when interstate Traffic Sensitive rates change.

7. However, the Commission is cognizant of the evolving regulatory climate that currently exists and will continue to monitor access charges within the state.

D. Bifurcation of Local Switching Element

8. In the January 13, 1999, order, the Commission required non-rural ILECs to bifurcate the intrastate local switching rate element. It has come to the attention of the Commission that said requirement may place an undue burden on the non-rural ILECs. Therefore, the Commission reconsiders its original finding and concludes that non-rural ILECs should not be required to bifurcate the intrastate local switching rate element at this time.

E. CLEC and CMRS Provider Access Rates

9. The access requirements contained in the Commission January 13, 1999, order only applied to ILECs. Since that time, the Commission has received several informal complaints regarding the access rates charged by Competitive Local Exchange Carriers (hereinafter "CLEC") and Commercial Mobile Radio Service (hereinafter "CMRS") providers. The Commission finds that it has jurisdiction with regard to CLEC intrastate access rates under its Neb. Rev. Stat. 75-609(2) authority. The Commission finds that, absent a demonstration of costs, a CLEC's access charges, in aggregate, must be reasonable comparable to the ILEC with whom they compete. This finding does not constitute a motion by the Commission to review CLEC access charges pursuant to Neb. Rev. Stat. 75-609(2).

10. With respect to CMRS providers, the Commission concludes that the Communications Act of 1934, as amended, currently preempts the Commission from regulating a CMRS providers intrastate access rates. Specifically, Section 332(C)(3) states "...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...". A state Commission may petition the FCC for authority to regulate the rates for any commercial mobile service if it can be demonstrated that market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. However, the Commission also concludes that state law currently prohibits the Commission from regulating a CMRS providers intrastate access rates. Specifically, Neb. Rev. Stat. 86-808 prohibits the Commission from regulating "...wireless telecommunications service".

F. Benchmark Re-evaluation

11. In its January 13, 1999, order, the Commission stated that it would re-evaluate the basic local exchange rate benchmarks within two years from the date of the order. The Commission hereby reconsiders and finds that the basic local exchange benchmarks will not be reevaluated until after the end of the rural ILEC four year transition period, at which point nearly all basic local exchange rates should have reached the existing benchmarks. The Commission does not want to set up a moving target for ILECs by increasing the benchmarks before some basic local exchange rates reach the existing benchmarks.

J. Uncollectible Accounts

12. The Commission finds that telecommunications carriers should be allowed to deduct uncollectible amounts from the revenues subject to the NUSF surcharge, in the event monies directly related to the uncollectible amounts have already been remitted to the NUSF. The Commission does not believe that it is fair to require companies to remit on monies that are not collected from telecommunications subscribers. However, non-payment of NUSF surcharge shall be considered as non-payment of services rendered by the telecommunications provider and subject to the appropriate remedies including disconnection of service. For example, if a subscriber would pay for their basic local exchange service but not pay the NUSF surcharge assessed on such service, that subscriber should be treated as not paying the bill for their basic local exchange service.

O R D E R

IT IS THEREFORE ORDERED that the findings as set forth above, are adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 21th day of February, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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